

ORDINANCE NO. G-08-12-12-6B1

AN ORDINANCE AMENDING CHAPTER 11, SECTIONS 11.501, 11.502, 11.603 AND 11.802, CODE OF ORDINANCES (1995 EDITION), CITY OF ROUND ROCK, TEXAS, TO AMEND THE LANDSCAPE REQUIREMENTS, TO AMEND THE OFF-STREET PARKING REQUIREMENTS, TO AMEND NONCONFORMING BUILDINGS, USES AND LAND; TO DELETE THE DEFINITION OF "ABANDONMENT"; AND PROVIDING FOR A SAVINGS CLAUSE AND REPEALING CONFLICTING ORDINANCES AND RESOLUTIONS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROUND ROCK, TEXAS:

I.

That Chapter 11, Section 11.501 (1)(a)(ii), Code of Ordinances (1995 Edition), City of Round Rock, Texas, is hereby amended to read as follows:

11.501 LANDSCAPING

(1) Purpose and Intent

(a) Applicability

(ii) Exemption from Landscape Requirements

The requirements of this section specifically shall not apply to the following:

1. One individual detached single-family residence constructed on its own lot;
2. A two unit single-family attached structure with each dwelling unit constructed on its own lot;
3. Restoration of a building or structure which has been damaged, destroyed or demolished to an extent less than fifty percent (50%) of its fair market value (as determined by the most recent appraised value of the appraisal district in which the building or structure is located);
4. Exterior or interior restoration of a designated historic structure;
5. Land located within the Central Business District;
6. Medians in street rights-of-way;
7. Ground mounted equipment located in street rights-of-way.

II.

That Chapter 11, Section 11.502 (2)(d), Code of Ordinances (1995 Edition), City of Round Rock, Texas, is hereby amended to read as follows:

11.502 OFF-STREET PARKING AND LOADING

(2) Off-Street Parking Requirements

(d) Unimproved Driveways and Unimproved Parking Areas; Nonconforming Use

An unimproved driveway and an unimproved parking area, which are located in a street yard or a side yard shall be considered as nonconforming uses and subject to the regulations regarding nonconforming uses in Section 11.600. Specifically, such unimproved driveway or unimproved parking area shall not be extended or expanded nor changed except to an improved driveway, an improved surface used for parking, or an unimproved surface.

If the building or structure that is served by the unimproved driveway is damaged or destroyed to an extent greater than fifty percent (50%) of its fair market value (as determined by the most recent appraised value of the appraisal district in which the building or structure is located, and if such building or structure is repaired or replaced, the unimproved driveway shall no longer be permitted and all off street parking shall be required to be on an improved driveway.

If the building or structure that is served by the unimproved driveway is increased by twenty five percent (25%) or more in the square footage, the unimproved driveway shall no longer be permitted and all off street parking shall be required to be on an improved driveway.

III.

That Chapter 11, Section 11.603 (1)(d) and (e), Code of Ordinances (1995 Edition), City of Round Rock, Texas, is hereby amended to read as follows:

11.603 NONCONFORMING BUILDINGS, USES AND LAND

(1) Nonconforming Buildings and Structures

(d) If a nonconforming building or structure has been damaged or destroyed to an extent greater than fifty percent (50%) of its fair market value (as determined by the most recent appraised value of the appraisal district in which the building or structure is located), such building or structure and its use, if repaired or replaced, shall conform to all regulations of the district in which it is located, and it shall be treated as a new building.

(e) Where the building official determines that a nonconforming building or structure has been damaged or destroyed to an extent greater than 50 percent of its fair market value (as determined by the most recent appraised value of the appraisal district in which the building or structure is located) and denies a

building permit for reconstruction on the basis of a nonconforming use, an applicant for a permit shall have the right of appeal to City Council within 15 days after receipt of notification of such action. The applicant shall be advised by the City Secretary of the time and place of the hearing at which the appeal will be considered and that the applicant shall have the right to attend and be heard as to reasons for filing the appeal. In determining the time and place of the hearing the City Secretary shall cause a public notification to be published in the official newspaper describing the requested development, a minimum of ten days prior to the hearing; and cause certified letters to be sent to all property owners within 200 feet of the boundary of the parcel of land for which the building permit is being applied for. In determining whether to allow the issuance of a building permit, the City Council shall determine that each of the following standards has been met.

- (i) It will not be contrary to the public interest.
- (ii) It will be in harmony with adjacent land uses.
- (iii) It will not adversely affect the public health, safety and welfare.

IV.

That Chapter 11, Section 11.802, Code of Ordinances (1995 Edition), City of Round Rock, Texas, is hereby amended to delete the definition of "Abandonment" in its entirety.

V.

A. All ordinances, parts of ordinances, or resolutions in conflict herewith are expressly repealed.

B. The invalidity of any section or provision of this ordinance shall not invalidate other sections or provisions thereof.

C. The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Ordinance was adopted was posted and that such meeting was open to the public as required by law at all times during which this Ordinance and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

Alternative 1.

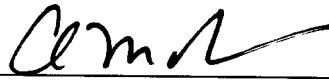
By motion duly made, seconded and passed with an affirmative vote of all the Council members present, the requirement for reading this ordinance on two separate days was dispensed with.

READ, PASSED, and ADOPTED on first reading this ____ day of _____, 2008.

Alternative 2.

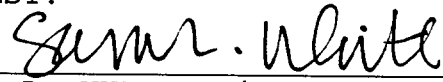
READ and APPROVED on first reading this the 4th day of December, 2008.

READ, APPROVED and ADOPTED on second reading this the 18th day of December, 2008.



ALAN MCGRAW, Mayor
City of Round Rock, Texas

ATTEST:



SARA L. WHITE, City Secretary

DATE: December 11, 2008

SUBJECT: City Council Meeting – December 18, 2008

ITEM: 6B1. Consider an ordinance amending Chapter 11, Sections 11.501, 11.502, 11.603 and 11.802, Code of Ordinances, regarding nonconforming building uses and land and to delete the definition of abandonment from the glossary. (Second Reading)

Department: Planning and Community Development

Staff Person: Jim Stendebach, Planning and Community Development Director

Justification:

The attached amendments are simply ordinance “clean-ups” to ensure conformity and clarity with conflicting Code provisions.

Proposal 1: To amend the Zoning Ordinance to reflect the provisions outlined in the proposed amendments to the sprinkler requirements contained in the Fire Code.

The Fire Department is in the process of updating the city’s sprinkler requirements. In preparing the amendments to these provisions, the city’s legal department noticed discrepancies between the Fire Code and the Zoning Ordinance particularly with respect to determinations made regarding the applicability of various zoning requirements when a non-conforming building is destroyed to an extent greater than 60% of its fair market value. The attached amendments reconcile the discrepancies and ensure consistency among the code provisions.

Presently, the Zoning Ordinance prohibits the reconstruction of a non-conforming building if it is destroyed to an extent greater than 60% of its fair market value. Any non-conforming building destroyed to this extent must be reconstructed in accordance with existing zoning regulations. In addition, the Zoning Ordinance also contains a provision concerning required upgrades to unimproved parking areas based on the same 60% extent of damage calculation. Finally, the Zoning Ordinance provides an exemption from landscaping requirements for any building or structure that is destroyed to an extent less than 60% of the structure.

The city’s legal department recommends that in all instances above the Zoning Ordinance use the same stricter 50% extent of damage calculation as that contained in the proposed sprinkler provisions. This will ensure consistency between the two ordinances. The proposed provisions also define fair market value as the most recent appraised value on record at the appraisal district.

Proposal 2: To amend the Zoning Ordinance by removing the definition of “Abandonment” from the glossary.

Currently, Section 11.603 (4) of the Zoning Ordinance, Nonconforming Buildings, Uses and Land, defines the term "Abandonment" as follows:

The nonconforming use of building, structure, or land which has been abandoned, shall not thereafter be returned to such nonconforming use. A nonconforming use shall be considered abandoned when:

- (a) The intent of the owner to discontinue the use is apparent; or*
- (b) The characteristic equipment and furnishings of the nonconforming use have been removed from the premises and have not been replaced by similar equipment within 90 days; or*
- (c) A nonconforming building, structure or land, or portion thereof, which is, or hereafter, becomes vacant and remains unoccupied for a period of 90 days; or*
- (d) A nonconforming use has been replaced by a conforming use.*

The definition above is contained in the body of the Zoning Ordinance and is the test staff uses when making determinations regarding abandonment. Recently, an applicant identified an conflicting definition within the glossary of the Zoning Ordinance. The glossary definition states the following:

When the use of a property has ceased and the property has been vacant for 90 days, abandonment of use will be presumed unless the owner can show that a diligent effort has been made to sell, rent, or use the property for a legally permissible use.

Both staff and our legal department agree that this glossary definition is open ended since it is unclear what constitutes a diligent effort to sell rent or use the property for a legally permissible use. To remove this uncertainty, staff proposes to remove the glossary definition and instead continue to use the abandonment test contained within the body of the Zoning Ordinance for future determinations.

Funding:

Cost: N/A

Source of funds: N/A

Outside Resources: N/A

Background Information:

The Planning and Zoning Commission unanimously recommended approval of the proposed amendments at their November 5th meeting.

Public Comment:

Public notice was posted and a public hearing was held in accordance with the City of Round Rock's Zoning Ordinance at the Planning and Zoning Commission meeting on November 5, 2008.